

**APPROVED**

**BOARD OF DENTISTRY  
MINUTES OF BOARD MEETING**

**Friday, December 8, 2006**

**Department of Health Professions  
6603 W. Broad Street, 5<sup>th</sup> Floor  
Richmond, Virginia 23230  
Board Room 1**

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**CALL TO ORDER:** A meeting of the Virginia Board of Dentistry was called to order at 9:05 a.m.

**PRESIDING:** Paul N. Zimmet, D.D.S., President

**MEMBERS PRESENT:** Meera A. Gokli, D.D.S.  
Jeffrey Levin, D.D.S.  
Jacqueline G. Pace, R.D.H.  
Darryl J. Pirok, D.D.S.  
Misty L. Sissom, R.D.H.  
Edward P. Snyder, D.D.S.  
Millard D. Stith, Jr.  
James D. Watkins, D.D.S.  
Glenn A. Young, D.D.S.

**STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board  
Sandra Whitley Ryals, Director for the Agency  
Emily Wingfield, Chief Deputy Director for the Agency  
Elaine Yeatts, Senior Policy Analyst  
Catherine Chappell, Administrative Staff Assistant

**COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General

**QUORUM:** All ten members of the Board were present.

**PUBLIC COMMENT:** None

**APPROVAL OF MINUTES:** Dr. Zimmet asked if the Board members had reviewed the minutes from the meetings in September 2006.

Dr. Watkins moved to approve the Minutes of the Orientation Meeting of September 6, 2006. The motion was seconded and passed.

Dr. Snyder moved to approve the Minutes of the Probable Cause Calibration Meeting of September 14, 2006. The motion was

seconded and passed.

Ms. Sissom moved to approve the Minutes of the Board Meeting of September 15, 2006. The motion was seconded and passed.

**Remarks by Sandra  
Whitley Ryals, Director  
of the Department of  
Health Professions**

Ms. Ryals introduced herself and thanked the Board for the opportunity to address them. She gave a synopsis of her background in state government, discussed recent changes in the agency, and introduced Emily Wingfield, the new Chief Deputy Director.

Ms. Ryals reviewed the key issues that she is addressing:

- Governor's Health Reform Commission, charged with improving access to healthcare, strengthening long term care, improving quality and safety, encouraging healthy lifestyles, and growing the healthcare workforce.
- Accountability and excellence in state agencies, including strategic planning and performance measures, noting that the emphasis for DHP would be on shortening the time frame of the disciplinary process for patient care complaints.
- Possible implementation of criminal background checks.

Ms. Ryals advised that the agency may be moving in mid-2007 to another location as part of a Governor's initiative to increase efficiency through co-location of several state agencies.

**REPORTS:**

**AADE Annual Meeting.** Dr. Zimmet reported on the AADE Annual Meeting held in Las Vegas in October. He noted that there were presentations on the evolving role of the dental hygienist and on the National Practitioner Data Bank. He received alerts about a company distributing drug kits to dental offices and the failure of the Alaska dental training program. He then emphasized the importance of staying for the entire meeting due to voting issues.

**Board of Health Professionals.** Dr. Gokli reported that her first meeting was primarily an orientation. She advised that BHP was looking into conducting criminal background checks for new applicants. She also reported that Robert Nebiker, former Director of DHP, spoke on the agency's accomplishments in:

- Disaster preparedness
- Customer satisfaction at 94% approval for applicants and customer satisfaction with the "friendliness" of the web page.
- Internet usage, with 3 million hits in the past year
- Implementation of dialing 211 for information on

practitioners

- Twelve new investigators were added and usage of CCA's was increased.

With respect to the future, Dr. Gokli reported that Mr. Nebiker anticipated increases in ancillary personnel providing services and providing greater flexibility in healthcare.

**Examination Committee.** Dr. Young reported that the Committee reviewed one RFP for the dental law examination to be used in sanctioning practitioners. He indicated that Board approval for issuance of a contract would be addressed later in the agenda.

**Regulatory-Legislative Committee.** Dr. Snyder reported on the recent Committee activities to:

- Request legislation to establish two levels of dental assistants which is still pending in the Governor's review process.
- Address concerns about what constitutes monitoring for nitrous oxide to clarify that only the dentist might set, adjust and discontinue administration.
- Propose regulations on training for dental hygienists to administer nitrous oxide and local anesthesia using the recommendations from Dr. Hunt, with the VCU School of Dentistry, to require 36 hours of continuing education to administer both nitrous oxide and local anesthesia and 8 hours for just administering nitrous oxide. He noted that action on the Committee's recommendation would be addressed later in the agenda.

## LEGISLATION AND REGULATIONS:

**Status report on regulations to increase fees.** Ms. Yeatts advised that the Governor has approved the fee increases, which will be published in the Register of Regulations on December 11, 2006, with an effective date of January 10, 2007 so that the increase would apply to the renewals due in March.

**Proposed regulation on administration of analgesia and local anesthesia by dental hygienists.** Ms. Yeatts reviewed the proposed regulations advanced by the Regulatory-Legislative Committee. She noted that questions arose at yesterday's committee meeting as to whether, in addition to a continuing education program, the coursework could be completed during the dental hygiene program and about who should be allowed to teach the clinical portion of the courses. She referenced an email from

Dr. Hunt stating that the coursework should be included in the curriculum of current students. She advised that the current draft requires completion of coursework and licensure prior to obtaining the required additional education and noted that further drafting would be needed to address this new information. Dr. Levin noted that Dr. Hunt also advised him that the School prefers that only dentists provide instruction for the clinical portion.

Dr. Snyder asked to defer further discussion until Ms. Yeatts provided a revision.

Dr. Griggs, VDA, asked for clarification on the changes to be made. He was advised that Ms. Yeatts would rework the regulations to reflect that the required coursework could be completed in a dental hygiene program or through post-graduate training. Ms. Reen added that the regulations need to state what type of documentation is required to certify that training was obtained.

Ms. Yeatts provided the Board with a redraft of the proposed regulations to provide two routes to certification, either post or during the education program and discussion of the intent and application of the regulations continued.

The following topics were discussed without resolution:

- Who should teach the clinical portion
- Determining when training is “substantially equivalent” by hours and/or by content and/or by number of administrations
- Whether the Board should issue a certificate
- What document must be posted to inform patients
- Whether training and posting should be consistent with the requirements for radiation safety

Mr. Casway advised that the current law only allows the Board to establish training requirements and that certification or registration is beyond the scope of the Board’s authority.

Dr. Zimmet halted the discussion and sent the proposed regulations back to committee for further work.

**Status of Legislative Proposals.** Ms. Reen advised that there is no information as to the Governor’s decisions on the three legislative proposals: to establishing two classes of dental

assistants, repeal the limitation on authority to take disciplinary action, or to amend the provisions for licensure by credentials. Ms. Ryals said that, given the Governor's announced health agenda, she does not anticipate that the Board's proposals will be included this year. She responded to Dr. Zimmet that the Board would need to resubmit the proposals for consideration next year.

**NOIRA for Public Participation Guidelines.** Ms. Reen advised that all boards within the agency are updating their guidelines to be consistent with changes in governing laws. She advised that the Notice of Intended Regulatory Action was reviewed and recommended by the Regulatory-Legislative Committee. Dr. Snyder moved that the Board approve issuance of the NOIRA. The motion was seconded and approved.

**Status report on Fast Track Proposal to Expand Timeframe for General Supervision.** Ms. Reen reported that the proposed change in time frame (from 7 months to 10 months) has been submitted and that no action was required at this time.

**BOARD  
DISCUSSION/ACTION:**

**Mississippi State Board of Dental Examiners Request for Reciprocal Recognition.** Dr. Zimmet referred to the letter from the Mississippi State Board of Dental Examiners. Dr. Watkins asked if anyone had experience with the Council of Interstate Testing Agencies (CITA) and it was noted that no one had observed the testing yet. The Board agreed to defer a decision until an observation is made.

**CITA Request for Exam Result Recognition.** With respect to the CITA correspondence dated October 9, 2006, Dr. Young asked if a representative from CITA could provide an overview of their exam at the next meeting. Ms. Reen agreed to invite a representative to the March meeting.

**WREB's Response to Concern about Prosthodontics Section.** Dr. Zimmet referred to the letter from WREB about changes to their examination. Dr. Watkins questioned what the change was in regards to "caries remaining" and asked Ms. Reen to request clarification. Dr. Young also asked for clarification on whether the prosthodontics section involves live patients.

**Consider establishing a policy for standard response to specific drug and equipment questions.** Ms. Reen noted that

inquiries about whether or not use of particular products or equipment fall within the scope of practice of dentistry are increasing and she requested that a standard response be developed to assure there is enough information provided for the Board to give an informed response. Dr. Young suggested that the person asking the question should be required to provide pertinent information about the use and safety of the product and to address how it relates to dentistry.

In regards to the specific inquiries, the Board responded as follows:

- Request more information about Lipodissolve, and dermal fillers as suggested by Dr. Young, noting that these products most likely fall within the provisions for oral and maxillofacial surgeons to perform cosmetic procedures.
- The Board's position is to allow prescribing anti-smoking drugs for dental related conditions.
- Zoom lights are within the scope of the practice of dentistry and should be used under the direction of a dentist and noting that dentists are prohibited from practicing in commercial and mercantile establishments.

Ms. Sissom asked if teeth whitening is part of the practice of dentistry. She was advised that the Board had previously decided to address teeth whitening questions on a case by case basis. Mr. Casway noted that the Attorney General's office issued an opinion that reflects the Board's decision since some procedures are purely cosmetic while others are not.

Dr. Pirok and Dr. Snyder asked for clarification of a dentist practicing in a mercantile establishment. Ms. Wingfield confirmed that a dentist cannot practice in such a setting.

**Maine's position on Informed Consent.** Dr. Levin asked the Board to consider adopting guidance on informed consent similar to the position adopted by Maine. He commented that he would like to find a simple way to explain the requirements to general dentists and to address documenting informed consent. Dr. Zimmet asked that the Regulatory-Legislative Committee study the proposal and that Dr. Levin serve as an ad hoc member of the Committee for this discussion.

**2007 AADE Mid-Year Meeting.** Dr. Zimmet announced that the AADE meeting would be held in Chicago in March. He asked that

anyone interested contact Ms. Reen for further information. Dr. Watkins, Ms. Sissom and Mr. Casway expressed interest.

**Practice Ownership.** Dr. Zimmet shared a recent ADA news article regarding the issue of ownership of a dental practice should the dentist die. He noted that Virginia did not have any provisions addressing the situation. Mr. Casway commented that Virginia law did provide that a dentist cannot be supervised by anyone who is not a licensed dentist and that he did not see a problem in Virginia with the scenario of the article.

**Certifying completion of a dental procedure.** Dr. Zimmet noted that there had been recent discussions about the regulation on falsely certifying completion of a dental procedure. He presented an ADA journal article on the legal and ethical considerations of deciding when to bill for a procedure. Discussion ensued relating to signing ADA forms for insurance and the planned change announced in the article. Ms. Reen noted that regulation 18VAC60-20-170 does not prohibit billing before a procedure is complete, that it only prohibits certifying that it is complete when it is not complete. Ms. Reen noted that the new ADA language will become effective January 1, 2007. The Board agreed to monitor this issue and to take no action at this time.

**Letter about Antifungal Prescriptions from Dr. Bowler.** Ms. Reen presented a letter from Michael Bowler, DDS regarding prescribing antifungal medication for vaginal yeast infections. She reported that the Board previously found that such prescribing was not within the scope of the practice of dentistry because a dentist cannot diagnose vaginal conditions. Ms. Reen advised that the executive director of the Board of Pharmacy saw this as a gray area which is not clearly addressed in the Drug Control Act. Dr. Pirok stated that in an emergency, it might be necessary for a dentist to prescribe outside of his or her scope of practice, but such action did not apply in a regular course of treatment. Ms. Pace asked how a dentist would know that the patient is correct in her self-diagnosis. Mr. Casway advised that the determination of appropriate prescribing is dependent upon emergent care and the usual course of treatment where the individual can seek medical care somewhere else. The Board asked Ms. Reen to advise Dr. Bowler that following discussion the Board reaffirmed its previous position.



**Law Exam Review of Proposals.** Dr. Young reported that the Exam Committee recommends that the Board contract with PSI to administer an on-line dental law exam with the understanding that Ms. Reen would clarify that the Committee would be included in an item review workshop and to address the costs of future revisions being covered through applicants' fees when utilization increases.

Dr. Young noted that once the examination is in place, the Board could offer continuing education credit for passing the examination to encourage review of the laws and regulations. It was also noted that the upcoming renewals will require licensees to certify that they are current with the laws. Dr. Young moved that the Board accept the proposal from PSI to develop the examination. The motion was seconded and approved.

**RECOGNITION OF MR. NEBIKER**

Dr. Zimmet presented and read a signed resolution given in honor of Mr. Nebiker's service at DHP.

**ORIENTATION TO SOUTHERN REGIONAL TESTING AGENCY**

Ms. Laura Slaughter, SRTA Executive Director, welcomed the Board to SRTA's membership then gave a slide presentation on member's roles and responsibilities, committees and examination procedures. Ms. Reen advised that she had submitted an application for membership conditioned on allowing compensation and reimbursement to come through the Board. She advised that SRTA would not be able to directly reimburse any Board member. Ms. Slaughter asked for names to fill the various posts she had noted. Dr. Zimmet announced that Dr. Watkins has agreed to be the liaison. He asked others to report their interest in examining and in serving on a committee to Ms. Reen so that he might make appointments.

**UPDATE ON ENFORCEMENT**

Ms. Lemon, Enforcement Director, expressed appreciation for being invited and noted that the Board of Dentistry has the third largest number of open cases. She then gave a slide presentation on the types and numbers of cases in various categories. She requested guidance on how to address x-rays when a dentist says he is unable to provide copies. The legal requirements for providing copies to patients, of making records available to the Board and strategies for having the investigators make copies were discussed including billing the dentist for copying costs incurred. Giving deadlines for production and using subpoenas was also discussed. Mr. Casway advised that the Code requires the dentists to produce his records, not copies. He advised that



the investigators should take the original x-rays and leave a receipt if copies are not provided. He also suggested that the board get the original x-rays and leave the copy with the dentist. He commented that the burden was on the dentists and a reasonable way to resolve the issue should be found. Ms. Reen asked for time to discuss this matter with Ms. Ryals and Ms. Wingfield so that she might make a recommendation at the next meeting. Dr. Zimmet tabled discussion until the next meeting.

Ms. Lemon asked for any comments about investigations and received the following responses:

- Dr. Pirok requested information regarding the volume of a dentist's practice and the number of dentists within the practice which often influences care and recordkeeping.
- Dr. Zimmet said it would be helpful to see dentist's billing records for insight into what the dentist is sending to the insurance company.
- Dr. Watkins expressed concern that the entire patient record be provided.
- Dr. Levin added that he would like to have the original x-rays and give copies back to the dentists. He asked if once the case is finalized, if the x-rays would be returned.
- Ms. Reen said she did not think that the x-rays could be returned since they are a part of the case record which the Board is obligated to maintain.

Ms. Lemon agreed to discuss the problem with x-rays with Ms. Ryals and Ms. Wingfield and, in the meantime, to request the x-rays, and then return with a subpoena, if necessary.

**EXECUTIVE  
DIRECTOR'S REPORT:**

**SRTA Membership.** Ms. Reen advised the application for membership along with the \$100.00 fee has been sent with the condition of membership discussed earlier. She asked members to email her by December 15, 2006, about interest in examining and in filling committee positions. Ms. Reen asked how the Board wanted to decide who would be the twelve voting members. Dr. Zimmet indicated that the president or Executive Committee would make the selection.

**Staffing Update.** Ms. Reen advised that the executive director of the Board of Long Term Care Administrators has been hired and the transition of that board to the new director, Lisa Hahn, has begun. She anticipates the transition of the licensing and discipline functions will be complete by the end of January 2007,

with technical support continuing as needed. Ms. Reen advised that she currently is utilizing Ms. Shannon Gordon in a wage position and is seeking to add a part-time case manager position to assist with the backlog of disciplinary cases.

**Radiation Safety Course Guidelines.** Ms. Reen reported she was still working on rewriting these guidelines and that she would take the changes to the Credentials Committee before presenting the information to the Board. She expressed concern about the current guidelines and the lack of any follow-up once a course is approved. She noted that she had received the first application from a high school for a radiation training course and that there is no age restriction, but the Department of Health has restrictions on radiation levels for persons below the age of 18. Dr. Levin suggested contacting Ms. Linda Carter, the radiation expert at the VCU/MCV School of Dentistry for her input.

**Guidance on Authority of Credentials Committee.** Ms. Reen sought clarification on the intent of the bylaws related to the Credentials Committee's authority to approve granting a license. She stated that agency policy changed about six months ago to state that only a board could deny licensure. The process was changed to have staff tells applicants that they may not be eligible or grounds may exist to deny licensure and that they might request an informal conference with the credentials committee to discuss their applications then the committee could, if authorized by the Board, grant licensure or it could recommend denying licensure to the Board. Ms. Reen asked if the Board's intent was to authorize the Committee to grant a license when the applicant documents that he meets the requirements or does the Board want the Credentials Committee to bring all licensure decisions to the Board. Dr. Zimmet advised that the intent of the bylaws is that the Committee could grant a license.

Mr. Casway commented that his experience with other boards was that staff reviews applications and if satisfactory, has the authority to issue licenses. However, if grounds exist to deny, staff should advise the applicant that such grounds exist and that they can request an informal conference. He stated that reinstatement cases go to special conference committees. He advised that if an informal conference committee decides the application is sufficient, they can grant a license if the board has delegated that decision. If they feel it should be denied, the Board would vote on

the committee recommendation and the applicant could request a formal hearing. The Board advised that granting a license was within the authority of the Credentials Committee.

**Data on Licensure by Credentials.** Ms. Reen presented information from the Department of Health on dentists licensed by credentials. She noted that the Board was the source for some of the data and that the information on dental specialties came from the Department of Health. This information had been shared with the Governor's Health Reform Commission, discussed previously by Ms. Ryals.

**Radiation Safety Guidelines.** Ms. Reen noted that this information had been presented previously.

**Forum at VDA June meeting.** Ms. Reen announced the Board would hold a forum during the Virginia Dental Association June meeting.

Dr. Levin inquired if email communication would help defer costs. Ms. Reen responded that the Board was in the process of updating the PPG list to include emails but that the data system in DHP is not yet able to do an email to all licensees.

**BOARD COUNSEL  
REPORT:**

**Closed Meeting.** Dr. Snyder moved that the Board enter into a closed meeting pursuant to §2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel in regards to litigation with William Lennon, DDS, John Doe, DDS, and Farhid Zurmati, DDS. Additionally, it was moved that Board counsel, Howard Casway, and Board staff, Sandra Reen, Patricia Larimer and Catherine Chappell attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

**Reconvene.** Dr. Snyder moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Zimmet announced that no action was proposed in the closed meeting.

**Report on AADE Board Attorney Roundtable.** Mr. Casway referred to his report and noted that he attended a discussion by the National Practitioner Data Bank regarding adverse action. He suggested that a notation be made on orders to the effect that such information would be reported to the Data Bank and that the agency needs to look into scanning orders onto the website without actual signatures due to identity theft issues. He then reviewed Ohio's Quality Intervention Program (QUIP), which appears to be similar to Virginia's CCA's.

**Closed Meeting.** Dr. Snyder moved that the Board enter into a closed meeting pursuant to § 2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel to consider the use of advisory letters. Additionally, it was moved that Board counsel, Howard Casway and Board staff, Sandra Reen, Patricia Larimer and Catherine Chappell attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

**Reconvene.** Dr. Snyder moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Snyder moved that the Board inform sources when advisory letters are issued. The motion was seconded and carried.

**Closed Meeting.** Dr. Snyder moved that the Board enter into a closed meeting pursuant to §2.2-3711.A.15 of the Code of Virginia for consultation with legal counsel to deliberate in the matters of Case #108168, Case #109458, and Case #110832. Additionally, it was moved that Board counsel, Howard Casway, and Board staff, Sandra Reen, Patricia Larimer and Catherine Chappell attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

**Reconvene.** Dr. Snyder moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the

closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Snyder moved to accept the Credentials Committee recommendation with respect to Case #108168. The motion was seconded and passed.

Dr. Snyder moved to accept the Credentials Committee recommendation with respect to Case #109458. The motion was seconded and passed.

Dr. Snyder moved to accept the Credentials Committee recommendation with respect to Case #110832. The motion was seconded and passed.

**ADJOURNMENT**

With all business concluded, the Board meeting was adjourned at 5:00 p.m.

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Paul N. Zimmet, D.D.S., President

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Sandra K. Reen, Executive Director

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Date

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Date